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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/966,397

09/28/2001

Kenneth G. Blemel

6480

7590

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EXAMINER

WEST, JEFFREY R

ART UNIT

PAPER NUMBER

2857

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/966,397

Applicant(s)

BLEMEL, KENNETH G.

Examiner

Jeffrey R. West

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 36-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-35, 42, and 43 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 1, drawn to a distributed system for monitoring a health status and integrity of at least one conduit, classified in class 702, subclass 183.
- II. Claims 2, 4, 17, and 33-35, drawn to a monitoring device for use in monitoring at least one conduit with at least one conductor for diagnostic purposes, classified in class 702, subclass 183.
- III. Claim 42, drawn to a method for assessing a health status of conduits, classified in class 702, subclass 182.
- IV. Claims 3, 5-16, 19-32, and 43, drawn to a set of sensors, classified in class 385, subclass 12.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require operating the monitoring device in both a monitoring mode and a birth certificate mode as well as acquiring, conditioning, and processing data for

comparison to previously stored data. The subcombination has separate utility such as determining an estimate of remaining useful life of a conduit.

Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by a single processing device employing software not requiring both local monitoring devices and a central processor. Further, the apparatus as claimed can be used to practice a process for health monitoring that does not perform the process of forming tuples that represent a time of a sample, identity of a sensor, and parameter values.

Inventions I and IV are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require sensors producing at least one optical phenomena when stimulated by a mechanism that causes the optical phenomena which are constructed so that end-to-end the sensors are essentially opaque to electrical signal transmission and are

positioned with respect to a conduit to provide information concerning the environment and real or potential damage and deterioration to the conduit. The subcombination has separate utility such as producing an optical phenomena in response to stimulation and providing measures of parameters including means, variances, range, and overall characteristics.

Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice a process for monitoring that does not perform the process of forming tuples that represent a time of a sample, identity of a sensor, and parameter values.

Inventions II and IV are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require sensors producing at least one optical phenomena when stimulated by a mechanism that causes the optical phenomena which are constructed so that end-

to-end the sensors are essentially opaque to electrical signal transmission and are positioned with respect to a conduit to provide information concerning the environment and real or potential damage and deterioration to the conduit. The subcombination has separate utility such as producing an optical phenomena in response to stimulation and providing measures of parameters including means, variances, range, and overall characteristics.

Inventions III and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to produce an optical phenomena in response to stimulation and provide measures of parameters including means, variances, range, and overall characteristics without the process of conditioning, sampling, holding, and digitizing signals, forming tuplets, providing an indication of steady state characteristics, etc.

3. Claim 18 has not been grouped with any of the distinct inventions because it improperly depends from both independent claim 1, which is part of group I, and independent claim 2, which is part of group II.

4. Because these inventions are distinct for the reasons given above and have

acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. The Examiner notes that while this restriction requirement is being made after a first action on the merits, 37 CFR 1.142(a), second sentence states: "[i]f the distinctness and independence of the invention be clear, such requirement will be made before any action upon the merits; however, it may be made at any time before final action in the case at the discretion of the examiner." This means the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops. In the instant case, the amendments to overcome the 35 U.S.C. 112, first and second paragraph, rejections as well as the addition of new claim 43 made the distinctness of the inventions clear, and therefore, the restriction requirement is being made in response thereto.

7. Any inquiry concerning this communication or earlier communications from the


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examiner should be directed to Jeffrey R. West whose telephone number is (571)272-2226. The examiner can normally be reached on Monday through Friday, 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (571)272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jrjw  
November 21, 2005

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
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